

VZCZCXRO1376
PP RUEHQU
DE RUEHPU #0558/01 0801403
ZNR UUUUU ZZH
P 211403Z MAR 07
FM AMEMBASSY PORT AU PRINCE
TO RUEHC/SECSTATE WASHDC PRIORITY 5665
INFO RUEHZH/HAITI COLLECTIVE PRIORITY
RUEHBR/AMEMBASSY BRASILIA PRIORITY 1474
RUEHSA/AMEMBASSY PRETORIA PRIORITY 1297
RUEHQU/AMCONSUL QUEBEC PRIORITY 0758
RUMIAAA/HQ USSOUTHCOM J2 MIAMI FL PRIORITY
RUCNDT/USMISSION USUN NEW YORK PRIORITY 1173

UNCLAS SECTION 01 OF 03 PORT AU PRINCE 000558

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STATE FOR WHA/CAR
DRL
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SOUTHCOM ALSO FOR POLAD
STATE PASS TO USAID FOR LAC/CAR
INR/IAA (BEN-YEHUDA)
TREASURY FOR MAUREEN WAFER

E.O. 12958: N/A
TAGS: [PREL](#) [PGOV](#) [HA](#)
SUBJECT: HAITI ABUZZ WITH CONSTITUTIONAL REFORM

REF: A. 06 PORT AU PRINCE 1012
[1](#)B. 06 PORT AU PRINCE 2413

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[1](#)1. Summary and Introduction: On March 7, President Rene Preval began holding working-group ''reflections'' with various sectors of society to discuss possible amendments to the constitution. From issues such as referencing Haiti's newly created tenth department (Nippes) to streamlining the numerous and expensive elections process, almost everyone agrees that the constitution needs to be modified to reflect Haiti's current situation. The mounting controversy is between those who believe that it might be worth violating the constitution's amendment process in order to benefit immediately from the necessary changes, and those who think the government should adhere to the amendment process regardless of the time delay this would cause. The country will celebrate the constitution's twentieth anniversary on March 29, and though numerous clauses have never been applied -- and many others have been violated -- due to both negligence and political turmoil, one emerging argument is that since its inception, the constitution is the only consistent governing element Haiti has had, and violating it would be a blow to recent progress. End Summary and Introduction.

Preval's Working Group Sessions
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[1](#)2. President Preval has asked representatives from the private sector, labor, education, human rights and other civil society groups to participate in working group sessions at the National Palace, which are led by a well-known constitutional historian, Claude Moise. He has also asked lawmakers, political parties and members of the current government to attend the meetings. According to Bernard Fils-Aime, president of the American Chamber of Commerce, the meeting, held March 3 for the private sector, had around 70 attendees, who spoke openly with the President and Moise. Fils-Aime said that Preval was brief and stressed that this is only a discussion about the thought process of amending, not discussion about amending the constitution.

[1](#)3. Moise gave a lengthy presentation on the history of the

constitution and the violations committed against it; many of which, Fils-Aime noted, occurred during Preval's first presidency (see paragraph 5). He also outlined the limitations of the presidency, calling Haiti's government 'essentially a parliamentary dictatorship.' (Ref A discusses presidential powers at length.) Moise gave examples of constitutional weaknesses: the extensive bureaucracy, outdated regulations, and an arduous amendment process. After Moise's presentation, the group discussed whether to follow the amendment process or whether to violate the constitution 'one last time.' Overall, Fils-Aime said, the discussion remained fairly neutral and participants commended the President on his initiative to amend the constitution and on his willingness to listen to various civil society groups.

Possible Amendment, Past Violations
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¶4. Some of the most common amendment proposals are loosening Haiti's stringent laws barring dual nationality, extending property ownership to foreigners, developing a more affordable government framework, reducing the number of elections, and creating equilibrium between the executive and legislative branches. Preval reportedly cited his inability to dissolve parliament should the two branches reach an impasse, or to veto legislation. (Note: Parliament can override the President's veto with a two-thirds majority. End note.) Other possible changes include clarity on who replaces the Prime Minister in his absence, what is meant by 'presidential vacancy' (ref B), the creation of a body to interpret the constitution, and adjusting or abolishing the set dates of presidential elections and inauguration, both of which have been repeatedly ignored in the past.

¶5. Due to both negligence and circumstance, political
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leaders have violated Haiti's constitution since its inception. Examples of violations are numerous and include the army's disbandment, the creation of a Provisional (vice Permanent) Electoral Council (CEP), former President Aristide's departure, and the resulting interim government from 2004-2006.

Delaying Elections, Increasing Executive Power
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¶6. Micha Gaillard, spokesperson of FUSION, told Poloff that following the President's meeting with political parties, participants doubted the president's intentions and noted that he sought to increase his power over that of the legislative branch. Also, the political parties expressed concern that this is part of the government's scheme to stop inauguration of the recently-elected local leaders and avoid further elections, both local and parliamentary until the end of the President's tenure in 2011. (Note: Lionel Delatour, a prominent businessman relayed the same rumor to Polcouns. End note.) Gaillard referred to the Constitution, which created decentralization in Haiti, but said that to this day, decentralization has never been completed. He said that without the results of the local elections, local authorities could not appoint a permanent CEP, and that 1/3 of the senate would not be replaced at the end of this year, as mandated by the constitution. He also noted that the legislative menu that the executive presented to parliament included the annulment of a decree, passed by the interim government, which gives guidance for enforcing decentralization.

Political Parties Not Alone in Voicing Opposition
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¶7. According to Deputy Maxeau Balthazar, the parliament is in favor of amending the constitution; few parliamentarians, however, would come out in favor of violating the amendment process. Balthazar stressed that Haiti is a young democracy,

and for many parliamentarians, this is their first chance to apply the constitution. Amending it before it has been applied would be disrespectful of what Haiti has worked so hard to achieve since the first round of elections in February 2006.

¶8. Fils-Aime said that several participants at the private sector meeting were adamant that the constitutionally-mandated amendment process should not be violated. Leopold Berloger, director of a talk radio program, cautioned the president to be sure that he follows the process with the most consensus, for fear that he might send the wrong message to his mostly favorable populous. Fils-Aime recalled that the interim government had also discussed amending the constitution. This would have been a disaster and should serve for further caution by Preval.

¶9. Director of Haiti's Civil Society Initiative, Rosny Desroches, told Poloff that in private round table discussions, the members voiced strong opposition to the possibility of altering the constitution according to any other process other than that outlined in the constitution itself. One participant at the meeting struck a cord when she said that if it were not for the constitution, Aristide might still be running the country. Desroches summed up the general feeling: Haitians recognize past violations but would not want to use this as precedent today.

Five Years at Best by the Book

¶10. Estimates vary, but in the best possible scenario, constitutional amendments could be recommended by the current (48th) legislature in 2010 if two-thirds of both houses vote in favor; the amendments could then be ratified by the 49th, again requiring two-thirds passage by both houses, in 2011. The amendment would enter into effect after the installation of President Preval's successor. Any delay in passage of the recommendation under this government would set the entire process back by at least five years.

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Create a Commission; Adhere to the Spirit

¶11. According to those present, participants at the president's meetings agreed that this is the time to start discussing the amendment process, but that this should not be his highest priority. The private sector representatives were more open to the thought of amending the constitution without following the amendment process, but proposed nonetheless that the President step aside, and let a commission examine this issue for the next couple of years. In 2010 when Preval could constitutionally propose the amendments, the government should then make a decision on whether to adhere to the constitution or not. (In response to this suggestion, the President retorted that he is not talking about creating a commission, he just wants to listen to various sectors on the issue.)

¶12. Desroches stressed that the civil society believed that the constitution should not be violated, and that the document was flexible enough to mold to the current situation while waiting for the amendments. For example, the Permanent Electoral Council, which calls for a total of nine representatives (one from each department), could be staffed with ten to account for Haiti's newest department, Nippes, without violating the spirit of the constitution. As far as the interminable elections cycle (national elections for the senate every two years, thousands of local politicians, subsequent indirect elections), which Haiti can ill afford, a wide consensus to modify the constitution could allow for interim suspensions of elections until the constitution can be formally modified.

Claude Moise: Biographical Information

¶13. Moise is the editor of Nouvel Matin, the newspaper associated with its founder and G-184 member Reginald Boulos. He is Haiti's foremost constitutional scholar. Because of his association with G-184 and his background as an academic and historian (and not a lawyer), some question whether he has the leadership skills to head up this project.

Comment

¶14. Haitians, starving for the kind of political dialogue the President initiated, have heralded Preval's efforts to begin the discussion about possible amendments. However, they are quick to stress that the constitution should be altered by the process outlined in the constitution itself. The private sector is the only group so far willing to entertain amendments ratified by extra-constitutional means. This initial reaction may change after three years when Preval is on his way out and could no longer benefit from the changes. However, should he move to modify the constitution before this time, post suspects he will face strong opposition. Also, the Prime Minister and parliament will likely oppose any alterations that reduce their constitutional powers, which President Preval allegedly has in mind.

¶15. That being said, the country could stand to benefit enormously from some of the proposed changes such as allowing for dual nationality and opening up land ownership to foreigners, which would encourage the diaspora to return and stimulate foreign investment. Also, the elections cycle is complex and expensive for a country with limited government revenue. As Preval pointed out in one of his meetings, estimates show that elections between now and 2011 could cost as much as US \$30 million, which at US \$1 million per paved kilometer could pave 30 kilometers of new roads. End comment.
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